these expenses should be charged to the *corpus,* thereby working an equitable apportionment. It is a simple matter to apportion such expenses between a life tenant and a remainderman, because the mortality tables show the relative values of their interests, but there is no apparent method of computing the duration of a fee subject to executory limitations, on which to base the present value of an annuity. Thus the court was limited to this method of equitable apportionment, which, indeed, seems the simplest and best method where it is applicable.

THE DECLARATION AND RESCISSION OF CASH AND STOCK DIVIDENDS.— The duty of the board of directors of a corporation to declare cash dividends upon the accumulation of a sufficiently large amount of available profits is an indefinite obligation, generally unenforcible in the absence of proof of bad faith.[1] In the ordinary case the stockholder acquires a right to a dividend upon his stock only when the directors have, in the proper exercise of their powers, declared the dividend. The act of declaration establishes the relation of debtor and creditor between the corporation and the stockholder, without any further act of the directors.[2] There is a tendency, however, to regard the right which is thus granted to the stockholder as defeasible at the discretion of the directors, acting for a reasonably proper cause.[3] Furthermore, this theory is not universal, and a specific act of appropriation to the stockholder is sometimes required.[4] Until such an act is done, then, it is held that no debt has been created, and the directorate is free to rescind the declaration without legal injury to the stockholder.[5] When

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[1]Mulcahy *v.* Hibernia S. & L. Society (1904) 144 Cal. 219, 77 Pac. 910; see Jackson's Adm'rs. *v.* Newark Plankroad Co. (1865) 31 N. J. L. 277. However, it is not unusual for a corporation to guarantee dividends upon its stock. The stockholder's right to such dividends does not accrue upon the date set in the guaranty; Taft *v.* Hartford etc. R. R. (1866) 8 R. I. 310; there is an implied condition that a sufficient amount of accumulated profits be available. Jermain *v.* Lake Shore etc. Ry. (1883) 91 N. Y. 483; Boardman *v.* Lake Shore etc. Ry. (1881) 84 N. Y. 157. The right to sue upon the guaranty is said to vest in the stockholder when both contingencies are fulfilled, but, being an incident of the stock, passes with it on assignment. Boardman *v.* Lake Shore etc. Ry., *supra.* It will be observed, however, that when the directors have declared the dividend, the right to it is no longer an incident of the stock, and an assignment of the stock does not transfer the dividend. See Jermain *v.* Lake Shore etc. Ry., *supra.* This leads to the conclusion that the rights to the dividend and on the guaranty become fixed and vested in the stockholder only after the declaration.

[2]McLaran *v.* Crescent Planing Mill Co. (1906) 117 Mo. App. 40, 93 S. W. 819; Wheeler *v.* Northwestern Sleigh Co. (C. C. 1889) 39 Fed. 347.

[3]See Beers *v.* Bridgeport Spring Co. (1875) 42 Conn. 17.

[4]Ford *v.* Easthampton Rubber Thread Co. (1893) 158 Mass. 84, 32 N. E. 1036. But for the suggestion that a money dividend immediately becomes the property of the stockholder, see King *v.* Paterson & H. R. R. R. (1860) 29 N. J. L. 82; *cf.* Spooner *v.* Phillips (1892) 62 Conn. 62, 24 Atl. 524.

[5]Ford *v.* Easthampton Rubber Thread Co., *supra*; see Dock *v.* Schlichter Jute Cordage Co. (1895) 167 Pa. 370, 31 Atl. 656; *contra,* McLaran *v.* Crescent Planing Mill Co., *supra.* Where dividends have been illegally declared, under a misapprehension of the existence of profits, they may be reclaimed by the corporation even after payment to the stockholders, on the theory that they had been paid and received under a mutual mistake. Grant *v.* Ross (1896) 100 Ky. 44, 37 S. W. 263.

enough has been done to establish constructively a fund to the credit of the stockholder, he is not only a creditor of the corporation but also the beneficiary of a trust, performance of which equity will aid him to compel.[6] A transfer of stock after the debt has been created does not operate to assign the right to the dividend, which, after vesting in the stockholder, is no longer an incident of the stock.[7]

A corporation may, however, instead of distributing its surplus in the form of cash dividends, choose to add it to the amount of its capital stock, and distribute the shares which represent the increase of its capital among its stockholders. Such an action does not diminish the property of the corporation, which remains precisely as great as it was before;[8] it increases the capital stock of the company and the individual holdings of the stockholders, although the actual value of their holdings in the aggregate remains unchanged. An increase of capital stock may only be made with the authorization of the stockholders themselves, followed by the issue of the new stock and compliance with certain formalities of the law.[9] In the recent case of *Staats v. Biograph Company* (U. S. C. C. A. 2nd Cir. 1916) 55 N. Y. L. J. 1327, the directors of the corporation voted a dividend of stock in the company, payable in scrip certificates, which could be converted, at the option of the directors, wholly or partly into cash or some form of interest-bearing obligation. The vote was announced to the stockholders, but at a subsequent meeting the directors rescinded their determination. It was held that the plaintiff, a stockholder, could not complain of the rescission. Inasmuch as the vote of the directors is but the first step in the procedure which results in the declaration of a stock dividend, it would seem reasonable and in just accord with the intention of the corporation that no indefeasible right to the dividend was created in the shareholders thereby.[10] Where, however, the board of directors announce a dividend of shares of the company's stock which represent not an increase of the capital but an investment of the surplus, the same principle should apply as in the case of a dividend of cash, or of profits invested in the stock of another company;[11] the declaration gives the shareholder a vested right which cannot be defeated except for proper cause.[12]

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[6]Beers *v.* Bridgeport Spring Co., *supra;* LeRoy *v.* Globe Ins. Co. (N. Y. 1836) 2 Edw. Ch. 657.

[7]Bright *v.* Lord (1875) 51 Ind. 272; see Jermain *v.* Lake Shore etc. Ry., *supra.* The same rule applies to a scrip cash dividend payable in the future "at the pleasure of the company". Billingham *v.* Gleason Mfg. Co. (N. Y. 1905) 101 A. D. 476, 91 N. Y. Supp. 1046, aff'd. 185 N. Y. 571, 78 N. E. 1099. Dividends belong to those who are stockholders at the time of the declaration, not at the time when the profits accrued from which the dividends are declared. Goodwin *v.* Hardy (1869) 57 Me. 143.

[8]See Williams *v.* Western Union Tel. Co. (1883) 93 N. Y. 162; Green *v.* Bissell (1907) 79 Conn. 547, 65 Atl. 1056.

[9]Terry *v.* Eagle Lock Co. (1879) 47 Conn. 141; N. Y. Consol. Laws c. 59, §§ 62, 63, 64, am'd. L. 1913 c. 305; N. J. Comp. Stat., § 27, p. 1612.

[10]Terry *v.* Eagle Lock Co., *supra.* Furthermore, the directors are always free to rescind an illegal stock dividend. Hollingshead *v.* Woodward (N. Y. 1885) 35 Hun 410.

[11]See City of Allegheny *v.* Pittsburg, Allegheny etc. Ry. (1897) 179 Pa. 414, 36 Atl. 161; Green *v.* Bissell, *supra.*

[12]*Cf.* Dock *v.* Schlichter Jute Cordage Co., *supra.* However, even under this ruling, a vested right is created after some act of appropriation by the directors. But a court would probably be as cautious in enforcing this right when such a course might embarrass the corporation as in the case of a real cash dividend. See Beers *v.* Bridgeport Spring Co., *supra.*